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December 23, 1998

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Magalie Roman Salas, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: Federal-State Joint Board on Universal Service, CC Docket Nos. 96-45**

Dear Ms. Salas:

On behalf of Western Wireless Corporation, I am enclosing for filing Comments on the Joint Board's Second Recommended Decision in the proceeding referred to above. These Comments are filed in response to the Public Notice, DA 98-2410 (released November 25, 1998).

If you have any questions regarding this matter, please contact me.

Respectfully submitted,

David Sieradzki

David L. Sieradzki
Counsel for Western Wireless Corp.

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Enclosures

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Before the
**FEDERAL COMMUNICATIONS COMMISSION**
Washington, D.C. 20554

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| In the Matter of | ) | |
| | ) | |
| Federal-State Board on Universal Service | ) | CC Docket No. 96-45 |
| | ) | |



**COMMENTS OF WESTERN WIRELESS CORPORATION ON SECOND RECOMMENDED DECISION OF THE JOINT BOARD**

Western Wireless Corporation ("Western Wireless"), by its attorneys, hereby submits its Comments on the *Second Recommended Decision* of the Federal-State Joint Board on Universal Service, FCC 98J-7 (released November 25, 1998). These comments are filed pursuant to the Public Notice, *Common Carrier Bureau Seeks Comment on Universal Service Joint Board's Second Recommended Decision*, DA 98-2410 (released November 25, 1998).

Specifically, Western Wireless urges the Commission to reject the Joint Board's recommendation to use study areas, rather than wire centers, as the geographic basis for determining the need for high-cost support, and for distributing such support. These comments demonstrate that such a measure is not competitively neutral, would significantly undermine one of the key tenets of Section 254, and is not necessary to control the overall size of the high-cost fund.

## I. INTRODUCTION AND SUMMARY

Based upon its experience in providing wireless services to the public, 1/ Western Wireless firmly believes that changes need to take place in order for any wireless provider to become a true competitor to wireline carriers. Full local competition cannot emerge unless regulators embrace the policies underlying the Telecommunications Act of 1996 ("1996 Act") and discard antiquated rules and policies that insulate incumbent local exchange carriers ("ILECs") from marketplace forces. This is especially true for rural high-cost areas. On the surface, universal service reform at the federal and state level promises to provide consumers with a choice of service providers for their communications needs. Beneath the surface, however, lurk the vestiges of the old system that undoubtedly will stop competition in its tracks and limit the availability of service options for consumers.

The Joint Board recently reaffirmed the Commission's stated goal of technological and competitive neutrality, and the consequent need to ensure that universal service support is fully portable:

> We recommend that the Commission continue with the policy . . . of making high cost support available to all eligible telecommunications carriers, whether they be an incumbent LEC or a competitive carrier, including wireless carriers. We believe that portable support is consistent with the principle of

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1/ Western Wireless provides cellular and personal communications service ("PCS") to subscribers in 22 western states, covering over 60 percent of the continental United States, as well as the state of Hawaii. Western Wireless has a serious interest in providing universal service in high-cost and rural areas. Toward that end, the company has filed for certification as an eligible telecommunications carrier ("ETC") in 13 states and is actively participating in universal service proceedings at the federal and state levels.

> competitive neutrality. . . . We continue to support the use of competitive neutrality as a guiding principle of universal service reform. . . . 2/

But certain aspects of the *Second Recommended Decision* leave doubts about whether reforming the current subsidy-ridden system to establish a competitively neutral universal service system is a top priority. Only by making the changes necessary to establish a competitive universal service system will the Commission ensure that consumers in high-cost and rural areas have the right to choose to obtain supported services from CMRS providers (and other new entrants) as well as from ILECs. Western Wireless urges the Commission to keep its focus on the goal of competitive neutrality as the highest priority. To that end, there must be parity between the revenue support available to all ETCs, regardless of those carriers' technologies, rate structures, or regulatory status.

Specifically, in these comments, Western Wireless demonstrates that the Commission should decline to adopt the Joint Board's proposal, in the *Second Recommended Decision*, to measure the need for high-cost support and distribute support based on large "study areas" (typically the entire area within a state served by a given ILEC). Rather, the Commission should adhere to its earlier pro-competitive decision, following the Joint Board's recommendation in its *First Recommended Decision*, to measure the need for high-cost support and distribute such support based on disaggregated geographic areas such as wire centers or

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2/ *Second Recommended Decision*, ¶ 56.

exchanges. If the goal is to limit the overall size of the high-cost universal service fund, the Commission should consider measures other than the Joint Board recommendation, such as use of a wireless cost model.

## II. THE 1996 ACT REQUIRES THE COMMISSION TO REFORM UNIVERSAL SERVICE POLICY TO ELIMINATE IMPEDIMENTS TO COMPETITION IN HIGH-COST AREAS

The Commission must fashion its universal service policy in a manner that is consistent with, and lays the groundwork for, fair local competition in both urban/low cost and rural/high cost areas. In adopting the 1996 Act, Congress expressly sought to discontinue the current system of implicit subsidies. The current system funds universal service in rural and high-cost areas primarily through implicit subsidies, supported largely by excessive charges incurred by urban/low-cost, long distance, and business customers. 3/ Instead, Congress directed that high cost and rural customers would be receive support through a mechanism that is explicit, fully portable, and equally available to all providers so as to afford multiple carriers the opportunity and incentive to serve high cost customers. This would simultaneously preserve universal service and provide customers in high-cost areas with a choice among telecommunications service providers. 4/

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3/ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 8783-85, ¶¶ 7, 10-11 (1997) ("*Universal Service Order*").

4/ *See Second Recommended Decision*, ¶ 21 ("The Commission concluded that the universal service support implicit in rates cannot be sustained if competition emerges in the marketplace, and that removing implicit universal service support

Section 254 directs regulators to establish universal policies that ensure that "[c]onsumers in rural, insular and high cost areas have access to telecommunications . . . services that are *reasonably comparable* to those service provided in urban areas[.]" 5/ This statutory requirement requires not just comparability of *rates*, but also reasonably comparable *opportunities to select among a range of telecommunications services from competing providers.* If federal universal service support is not distributed in a way that enables new entrants to serve high-cost customers to the same degree as incumbents, those customers will be no better off than before passage of the 1996 Act. Indeed, a program that effectively creates incentives for new entrants *not* to serve high-cost customers at all would violate the letter and spirit of the 1996 Act.

Surprisingly, the Joint Board recommendation and the separate statements of some of its members appear to question the fundamental principle of reforming universal service not only to be consistent with emerging local competition in urban and low-cost areas, but also to facilitate and promote local competition in rural and high-cost areas. 6/ These statements do not adequately

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from interstate rates and replacing such support either with improved revenue recovery mechanisms or with explicit support should remain a goal of federal telecommunications reform.") (*citing Universal Service Order*, 12 FCC Rcd at 8786 ¶ 17); *Id.* at ¶ 56.

5/ 47 U.S.C. § 254(b)(3).

6/ *See, e.g., Second Recommended Decision,* ¶¶ 33-34; Separate Statement of Commissioner Susan Ness at 2 ("[T]hat local competition is not yet developing quickly . . . . reduces the urgency . . . of replacing implicit support with explicit support."); Separate Statement of Public Counsel Martha Hogerty at 1 ("Section 254 recognize that the current system of implicit subsidies *itself* is a major barrier to the development of competition in rural and high-cost areas. Implicit subsidies *must* be eliminated and converted to explicit and portable support for the Commission to realize its commitment to competition. Western Wireless strongly encourages the Commission to maintain its commitment to universal service reform and to make the necessary changes to establish a competitive universal service system.

## III. DETERMINING FORWARD-LOOKING COSTS AND PROVIDING SUPPORT ON A STUDY-AREA-WIDE BASIS WOULD UNDERMINE COMPETITIVE NEUTRALITY

The Commission should adhere to its initial decision to use a relatively small geographic unit, such as wire centers or exchanges, to measure forward-looking costs for the purpose of assessing the need for high-cost support, and to distribute high-cost support on the same disaggregated geographic basis. This approach, initially supported by the Joint Board in its November 1996 *First Recommended Decision,* 7/ will both target high-cost support in an efficient manner and provide a meaningful opportunity for new entrants to serve rural/high cost

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does not require that regulators take measures to identify and eliminate all implicit support."); Dissenting Statement of Commissioner Harold Furchtgott-Roth at 5 ("Universal service programs were not created to bring competition to rural America.").

7/ *Federal-Board on Universal Service* CC Docket No. 96-45, Recommended Decision, 12 FCC Rcd 87, 181-82, 232, ¶¶ 178, 277(1) (1996) ("*First Recommended Decision*").

markets, as the Commission recognized. 8/ By contrast, the *Second Recommended Decision*'s proposal to use relatively large study areas for these purposes 9/ would create virtually insurmountable barriers to any carriers other than ILECs providing universal service in high-cost and rural areas, and would severely undercut the Commission's approach to competitive neutrality.

If the Commission were to adopt this new recommendation, the level of universal service support in high cost areas would almost certainly be insufficient to allow competition to take root there, and would preclude entry by carriers other than the ILECs. This is so because calculating the costs of providing ubiquitous service -- and the amount of universal service support necessary to do so -- using study areas averages costs over a much broader area, including large numbers of customers in urban and other low-cost areas. This, in turn, artificially reduces the "cost" calculated, and thus the resulting support levels, to high cost customers by factoring in service provided to customers that cost less than the national average to serve. In some states where the overall average cost level in the study area is below the national average, this method will provide no federal support at all to rural areas within those states that are costly to serve.

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8/ *First Report and Order* at ¶ 193 ("calculating support over small geographic areas will promote efficient targeting of support."); *id.* at ¶ 184 (stating, in the context of defining eligible carriers' service areas, that "service areas should be sufficiently small to ensure accurate targeting of high cost support and to encourage entry by competitors.").

9/ *Second Recommended Decision*, ¶¶ 32-35.

This can best be explained with the following hypothetical. Assume that one ILEC serves the entire state (so that the study area corresponds with the state), and that the statewide average monthly cost of service in a given state is $40 per line. Further, assume that the cost of service in urban wire centers in the state is $15 per month, and the cost of service in the rural wire centers is $200 per month. In addition, assume a revenue benchmark of $30 per month. Under the universal service reform methodology in the FCC's *Universal Service Order*, $170 in support would be distributed to the ILEC and to competitive carriers serving the rural wire centers (the $200 cost minus the $30 revenue benchmark), and no support would be distributed in the urban wire centers. ILEC implicit subsidies would be eliminated, and new entrants would be able to provide service to rural wire centers and compete with the ILECs in those areas.

By contrast, if the methodology proposed in the *Second Recommended Decision* were applied to the same assumed fact pattern, the ILEC and any competitive carriers would receive $10 per month for each line served throughout the state (the $40 statewide average cost minus the $30 revenue benchmark). That same $10 per month would be available for every line in both urban and rural areas. In high-cost rural areas, the ILEC would continue to provide service despite the high cost ($200) and lack of explicit subsidy. The ILEC would do this by drawing on its existing monopoly flow of implicit cross-subsidies (*i.e.*, selling service to urban customers at rates significantly higher than the $15 cost). It is likely that few, if any, new providers would enter the market, given the high cost and the minimal level of explicit "high-cost support" available. At the same time, the $10 per month subsidy would be available in urban areas, artificially stimulating entry, even though it would not be needed.

These examples show that determining costs and providing support on a study-area basis is not competitively neutral and would stand as a disincentive -- and probably a complete bar -- to new entrants' providing service to high cost areas. The examples also show that an explicit universal service mechanism based on study areas effectively perpetuates the implicit subsidization of high cost consumers by urban/non-high-cost customers. Even many rural ILECs recognize the importance of determining the need for support and distributing support payments on as geographically disaggregated a basis as possible. 10/

Distributing federal support on an aggregated study-area-wide basis will condemn rural consumers to perpetual dependence on the ILECs, and on implicit support through the geographic averaging inherent in ILECs' rate structures. Essentially, under this approach, ILECs will be forced to self-subsidize their service to high-cost areas, by continuing the implicit flow of subsidies through geographic averaging and other non-competitively neutral implicit mechanisms. These mechanisms are not available to competitive entrants. Moreover, federal

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10/ *See Common Carrier Bureau Seeks Comment on the Washington Utilities and Transportation Commission's and Twenty Rural Telecommunications Companies' Petition for Agreement with Designation of Rural Company Eligible Telecommunications Carrier Service Areas at the Exchange Level and for Approval of the Use of Disaggregation of Study Areas for the Purpose of Distributing Portable Federal Universal Service Support*, DA 98-1691, released August 24, 1998.

support will flow to lines in some low-cost and urban areas (within study areas with higher-than-average costs), even though no support is needed in those areas. As a result, the *Second Recommended Decision* would have the perverse effect of artificially encouraging competitive entry exclusively in urban and low-cost areas, and discouraging competitive entry in high-cost areas. This is the opposite of what the 1996 Act contemplates for the new competitive telecommunications regime.

The Commission cannot rely on state-created explicit subsidy mechanisms at the intrastate level to cure this problem, as the *Second Recommended Decision* appears to recommend. 11/ First, as is recognized elsewhere in the *Second Recommended Decision*, 12/ most states are far from a point where such systems will be in place by mid-1999. Moreover, state commissions are likely to follow the FCC's lead in these matters, and if the FCC abandons competitive neutrality as a fundamental goal of universal service, there is no reason to believe that states will be any more committed to that goal. Finally, even if state commissions adopted pro-competitive intrastate mechanisms, they could not undo the anti-competitive consequences of the federal system, because federal support will be distributed directly to carriers, not through state commissions.

For all these reasons, the Commission should retain its policy of determining the need for high-cost support and distributing support on the basis of

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11/ *Second Recommended Decision*, ¶ 37.

12/ *Id.*, ¶ 61.

disaggregated geographic units, rather than large study areas. Only by doing so will the Commission further the goals of competitive neutrality and fostering competition that are, as demonstrated above, the cornerstones of Section 254.

## IV. THE COMMISSION SHOULD CONSIDER COMPETITIVELY NEUTRAL APPROACHES TO CONTROL THE OVERALL SIZE OF THE HIGH-COST FUND

The Commission can achieve its goal of imposing limits on the overall size of the fund through means other than the competition-damaging study area-based cost methodology advanced in the *Second Recommended Decision.* Western Wireless strongly supports the goal, cited by the Joint Board, of keeping in check the overall size of the universal service high-cost fund. 13/ The Joint Board recognized that its "hold harmless" rule, combined with the need to provide additional support to certain states, would cause the federal universal support fund to grow. 14/ Hence, the Joint Board apparently recommended the study area approach, which will reduce the amount of support provided to high cost areas, in part, as a way of keeping the overall size of the fund from growing too large. 15/

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13/ *Second Recommended Decision,* ¶ 47 ("the federal high cost support fund should be only as large as necessary [to] ensure that there is balance between consumers who directly receive the benefits of universal service support and those consumers who must pay for the support through their rates").

14/ *Id.* at ¶ 49 ("We recognize that some states currently may not receive support sufficient to enable reasonably comparable rates, and thus we believe the support level may rise somewhat.").

15/ *See supra.*

However, there are other, competitively neutral ways to accomplish the goal of limiting the overall size of the fund, without adopting the problematic study area mechanism discussed above. For example, as Western Wireless has demonstrated, there are many high-cost exchanges where the cost of service would be significantly lower if wireless, rather than wireline, technologies are used. 16/ By basing support on the results of a wireless cost model in those exchanges, the overall size of the fund could be limited. 17/ Another way of accomplishing the goal of keeping the overall size of the fund in check would be to employ a higher revenue benchmark, an issue that remains open in this proceeding. Both of these approaches accomplish the same goal as the study-area approach -- limiting the overall size of the fund -- but unlike that approach, they do so in a competitively neutral manner. The Commission should look to such competitively neutral policies, rather than adopting a Joint Board recommendation that is not competitively neutral and that will essentially leave consumers in rural areas to perpetual reliance on monopolistic ILEC provision of basic telecommunications services.

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16/ *See* Western Wireless Corporation Comments on Model Platform Development, in CC Docket Nos. 96-45 and 97-160, filed August 28, 1998.

17/ Western Wireless intends to submit its wireless cost model to the Commission in the very near future.

## V. CONCLUSION

For the foregoing reasons, the Commission should reject the Joint Board's new recommendation that universal service costs and support be determined on a study-area basis. Instead, the Commission should retain the current policy, initially recommended by the Joint Board and adopted by the Commission, of determining costs and support at the wire center level.

Respectfully submitted,

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Dated: December 23, 1998

# CERTIFICATE OF SERVICE

I, Cecelia Burnett, hereby certify that on this 23rd day of December, 1998, copies of the Western Wireless Corporation Comments on the Second Recommended Decision of the Joint Board on Universal Service were served on the parties listed below by hand delivery or first class mail.

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